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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/614,616	07/07/2003	Jeffrey Fasnacht	SJ-101US	7479
24314	7590	02/14/2005	EXAMINER	
JANSSON, SHUPE & MUNGER, LTD 245 MAIN STREET RACINE, WI 53403			PARSLEY, DAVID J	
			ART UNIT	PAPER NUMBER
			3643	

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/614,616

Applicant(s)

FASNACHT, JEFFREY

Examiner

David J Parsley

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 27-45 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-20 and 33 is/are allowed.
- 6) ☐ Claim(s) _____ is/are rejected.
- 7) ☒ Claim(s) 27-32, 42 and 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- ☒ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10-9-03.
- ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: _____.

Detailed Action

Amendment

1. This office action is in response to applicant's amendment dated 5-10-04 and this action is final.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 34-35 and 39 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,253,446 to Ogle.

Referring to claim 34 and 39, Ogle discloses a spinnerbait lure comprising, a frame – at 12-19a or 23, having upper and lower arms extending divergently from a frame-vertex in a predetermined shape in a non-stressed condition – see for example figures 1-2, the shape having the arms in a substantially fixed configuration with one another – see for example figures 1-2, at least one blade – at 18 or 34, secured to the frame – see figures 1-2, a metal body embedded within the frame – see for example column 4 lines 20-34, and the frame being formed from an integral length of polymeric material – see column 4 lines 20-34, the polymeric material being

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selected such that the frame always retains the original configuration absent force induced flexing sufficient to break the frame – see for example figures 1-2 and column 3 lines 24-68 and column 4 lines 1-34.

Referring to claim 35, the frame is dimensioned such that the frame exhibits flexing resilience during fishing – see for example columns 3-5.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36-38 and 40-41, are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogle or Link as applied to claims 35 or 39 above, and further in view of U.S. Patent No. 4,640,040 to Smith.

Referring to claims 36 and 40, Ogle does not disclose at least the upper arm has an oblong cross section, thereby imparting a preferential directionality to vibration of the upper arm. Smith does disclose the upper arm – at 12, has an oblong cross-section – see for example figures 1-2 and 6. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Ogle and add the upper arm of oblong cross section of Smith, so as to allow for objects to be movably connected to the frame.

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Referring to claim 37, Ogle as modified by Smith further disclose the upper arm – at 12 of Smith, has an upper distal end and the cross section of the upper arm has an area that progressively decreases from the frame vertex toward the upper distal end – see for example figures 1-2 and 6 of Smith.

Referring to claim 38, Ogle as modified by Smith further discloses the cross-section of the upper arm has two dimensions, the greater dimension of the cross section of the upper arm is in the plane of the frame – see for example figures 1-2 and 6 of Smith.

Referring to claim 41, Ogle as modified by Smith further discloses the upper arm – at 12 of Smith, has an upper distal end and the cross section of the upper arm has an area that progressively decreases from the frame vertex toward the upper distal end – see for example figures 1-2 and 6 of Smith, and the cross-section of the upper arm has two dimensions, the greater dimension of the cross section of the upper arm is in the plane of the frame – see for example figures 1-2 and 6 of Smith.

Claims 44-45 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ogle as applied to claim 39 above and further in view of U.S. Patent No. 6,601,336 to Link.

Referring to claim 44, Ogle does not disclose the frame is transparent. Link does disclose the polymeric material – at 52 is transparent – see for example column 3 lines 54-61. Therefore it would have been obvious to one of ordinary skill in the art to take the device of Ogle and add the polymeric material being transparent of Link, so as to allow for the fish to not see the polymeric material and to see through the polymeric material.

Referring to claim 45, Ogle modified by Link further discloses the polymeric material is colored – see for example column 4 lines 20-34 of Ogle and column 3 lines 54-61 of Link.

Allowable Subject Matter

4. Claims 1-20 and 33 are allowed.

Claims 27-32 and 42-43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Regarding the prior art rejections, the only claims that stand rejected are claims newly added in applicant's latest amendment dated 5-10-04. Therefore, since these claims are rejected for the first time in this application no arguments with respect to these claims were made.

Further, it is noted that the U.S. Patent No. 6,763,631 to Santini cited below in paragraph 6, is believed to be prior art that is applicable to applicant's claimed invention under 35 U.S.C. 102(e). However, applicant's filing of the affidavit under 37 CFR 1.131 has overcome the U.S. Patent No. 6,796,080 to Mathews with a priority date of 12-19-02. Since the Santini reference has an earliest effective filing date of 4-3-03, which is later than the earliest effective filing date of the Mathews reference of 12-19-02, the Santini reference is only being cited as relevant prior art and is not being applied under a prior art rejection.

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

7. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

The following patents are cited to further show the state of the art with respect to spinnerbait lures with plastic/polymeric frames in general:

U.S. Pat. No. 6,665,977 to Hammond – shows spinner and plastic frame

U.S. Pat. No. 6,763,631 to Santini – shows spinner and plastic frame

U.S. Pat. No. 6,796,080 to Mathews, Jr. et al. – shows spinner and plastic frame

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to David J Parsley whose telephone number is (703) 306-0552. The examiner can normally be reached on 9hr compressed.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Poon can be reached on (703) 308-2574. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



David Parsley
Patent Examiner
Art Unit 3643



PETER M. POON
SUPERVISORY PATENT EXAMINER

2/10/05